UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 92-2283

District Court No. 90-547-CIV

CORNELL WILLIAMS, individually and as chair of the Orange County Political Coalition; JAMES JACKSON, individually and as correspondence secretary for the Committee of Organized Groups ("COG"); WARDELL SIMS and JAMES Q. MITCHELL, individually and as past presidents of the Coalition, on behalf of themselves and all others similarly situated to them in their individual capacities; and the aforementioned unincorporated associations,

Plaintiffs-Appellants,

versus

THE ORANGE COUNTY, FLORIDA, BOARD OF COUNTY COMMISSIONERS, including Commission Chair Hal Marston, former Commission Chair Tom Dorman, and Commissioners Linda Chapin, Vera Carter, and Bill Donegan, and their employees, assignees, and successors in office; BETTY CARTER, supervisor of elections, Orange County, Florida,

Defendants-Appellees.

Apppeal from the United States District Court
for the Middle District of Florida

Before FAY, DUBINA, and CARNES, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel,

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: December 28, 1992
For the Court: Miguel J. Cortez, Clerk
By: /s/ Karleen McNabb
Deputy Clerk
ISSUED AS MANDATE: Mar. 9, 1993

(This was stamped as being filed on its front page, p.1a here, U.S. Court of Appeals, Eleventh Circuit **Dec. 28 1992** Miguel J. Cortez, Clerk.)

CORNELL WILLIAMS, individually and as chair of the Orange County Political Coalition; JAMES JACKSON, individually and as correspondence secretary for the Committee of Organized Groups ("COG"); WARDELL SIMS and JAMES Q. MITCHELL, individually and as past presidents of the Coalition, on behalf of themselves and all others similarly situated to them in their individual capacities; and the aforementioned unincorporated associations,

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THE ORANGE COUNTY, FLORIDA, BOARD OF COUNTY COMMISSIONERS, including Commission Chair Hal Marston, former Commission Chair Tom Dorman, and Commissioners Linda Chapin, Vera Carter, and Bill Donegan, and their employees, assignees, and successors in office; BETTY CARTER, supervisor of elections, Orange County, Florida,

Defendants-Appellees.

No. 92-2283.

United States Court of Appeals, Eleventh Circuit.

Dec. 28, 1992.

Appeal from the United States District Court for the Middle District of Florida, James L. Watson, Judge, Sitting by Designation.

Before FAY, DUBINA, and CARNES, Circuit Judges.

PER CURIAM:

This appeal stems from a lawsuit brought by a plaintiff class composed of "all black citizens of Orange County, Florida, who were or could have been eligible to vote since 1980," against Orange County, Florida, and other defendants. The lawsuit, brought under the Voting Rights Act of 1965, 42 U.S.C. § 1973, and the Fourteenth and Fifteenth Amendments of the United States Constitution, challenged the system of county government which consists of six commissioners elected from single-member districts and one chairperson elected at large. The district court granted summary judgment for the defendants.

We affirm based on the findings and reasoning contained in the district court's opinion, 783 F. Supp. 1348 (M.D. Fla. 1992), all of which we adopt, except for the dictum contained in the first full paragraph on page 1362 of that opinion.

AFFIRMED.

- This decision was published as Williams v. Orange County, Florida, 979 F.2d 1504 (11th Cir. 1992).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. CASE NO. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA,
Defendant.
_____/

ORDER

Plaintiffs Cornell Williams et al., move the Court pursuant to Fed.R.Civ.P. 59 to alter or amend its judgment in this case. After due deliberation, it is ORDERED, that plaintiffs' motion is DENIED.
Done and Ordered this 26th day of February, 1992.

/s/ James L. Watson
United States District Judge
(Sitting by Designation)

(This was stamped FILED 92 FEB 26 PM 2:21, Clerk, U.S. District Court, Middle District of Florida, Orlando, Florida)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISON

D.C. DOCKET NO. 90-547-CIV-ORL-19

CORNELL WILLIAMS, (et al.),
versus
ORANGE COUNTY, FLORIDA,

JUDGMENT IN A CIVIL CASE

[__] **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[xx] **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED and adjudged that defendant's motion for summary judgment is granted; Judgment is entered in favor of the defendant, Orange County, and against the plaintiffs Cornell Williams, et al..

Feb. 3, 1992
Date

David L. Edwards
Clerk
/s/ Cindy Burgess
(By) Deputy Clerk

CORNELL WILLIAMS, et al.,
Plaintiffs,
v.
ORANGE COUNTY, FLORIDA,
NO. 90-547-Civ-Orl-19
United States District Court,
M.D., Florida, Orlando Division,
Jan. 31, 1992.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 56(f)

WATSON, District Judge (sitting by designation).

This is a civil rights action brought under the Voting Rights Act of 1965, and the Fourteenth and Fifteenth Amendments of the United States Constitution. In 1988, the electors of Orange County approved a new form of county government under which six county commissioners are elected from single-member districts and one commissioner who serves as chairperson is elected at large. The chair person has both legislative and executive powers. The system is referred to herein as the "6-1" system.

The plaintiffs have been certified as the class of "all black citizens of Orange County, Florida, who were or have been eligible to vote since

1980." They allege that the 6-1 system was enacted with the purpose and effect of diluting the voting power of black electors.

This case is before the Court on defendant Orange County's motion for summary judgment pursuant to Rule 56(c) Fed. R.Civ.P. Plaintiffs oppose the motion and move the Court under Rule 56(f) Fed. R.Civ.P. for additional discovery.

This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343, and 42 U.S.C. § 1973. Plaintiffs motion under Rule 56(f) is DENIED, and defendant's motion for summary judgment is GRANTED.

The Court, after looking at all the material in the case from the point of view most favorable to plaintiffs, finds nothing beyond the unsupported opinions of plaintiffs to suggest that the adoption of the "6-1" system of election for the Orange County government violated the rights of black voters under the U.S. Constitution or the Voting Rights Act of 1965. Plaintiffs have not come forward with any evidence which would place in factual dispute the proposition abundantly supported by affidavits, that the "6-1" system was not intended to dilute the black vote and does not in fact operate to dilute that vote.

The 1990 Census now makes it clear that one of the six districts can be drawn so as to have a black voting age majority. This eliminates one of Plaintiffs' original claims. In addition, it is clear that the rights of black voters are not diluted with respect to the at-large election of one County Chairman. Plaintiffs have failed to raise a genuine issue of fact to challenge the persuasive evidence that in elections which are countywide in Orange County, the white voting majority does not vote as a bloc so consistently that it usually defeats the preferred candidate of black electors. Plaintiffs have entirely failed to create any genuine issue as to the correctness of the expert opinion that in county-wide elections since 1980 the voting preferences of black voters have found strong and meaningful expression.

BACKGROUND

In November of 1986, the electors of Orange County approved a new home rule charter, which became effective on January 1, 1987. At that time, Orange County commissioners were elected in at-large elections from five residency districts. Section 203 of the Charter provided that "a proposition calling for single-member representation within the Commission districts shall be submitted to the electors of Orange County at the general election to be held in November, 1988." Section 702 provided for the appointment of a Charter Re-

view Commission ("CRC") by the Board of County Commissioners ("BOCC") to conduct a comprehensive study of county government and to make proposals for amendments or revisions to the Orange County Charter. Defendant's Motion for Summary Judgment, Docket Number 79, Appendix A, Affidavit of Betty F. Carter, at 3, and Orange County Charter, attached thereto as exhibit 1.

The CRC was created in August 1987 by resolution of the Board of County Commissioners. Id. The resolution provided that "Any proposed amendments or revisions to the Charter shall be placed on the ballot without the approval of the Board of County Commissioners of Orange County Florida." Carter Affidavit, exhibit 2, at 2.

At a meeting on July 15, 1988, the CRC voted (thirteen to two) in favor of placing two propositions on the ballot, worded as follows:

PROPOSITION 1

Single-Member County
Commission Districts

"Shall the five (5) members of the Orange County Commission of Orange County, Florida, be elected to the office from single-member districts by electors residing in each of those districts only?"

PROPOSITION 2

Orange County Charter Revision Providing for Six (6) Single-Member Districts, County Chairman, and Other Provisions

"Shall the Orange County Charter be revised increasing the number of County Commissioners from five (5) to six (6); providing for election of each commissioner only by the voters in their commission district; creating the office of County Chairman elected by all county voters and limited to two consecutive terms; specifying legislative and executive functions, powers and duties; revising the initiative process; allowing municipal ordinances to prevail over county ordinance [sic] and making other technical and related changes?" Carter Affidavit, at 4.

Subsequent to approving the ballot issue, the CRC obtained a legal opinion to the effect that if both propositions passed, the result would be the same as if proposition one failed and proposition two passed. Carter Affidavit, at 5. Both propositions were submitted to the public at the 1988 general election. Both received a majority of the votes cast. Defendant's Motion for Summary Judgment, Appendix F, Official Cumulative Report, Orange County--General Election November 8, 1988, at 2, 3. The interpretation of counsel for the CRC was upheld after litigation in state court.

The present 6-1 system is the result.

Plaintiffs allege that the 6-1 system dilutes local black voting strength in two ways: by limiting choice for the minority to a legislative office downgraded by the enhancement of the powers of the at-large chairperson, and by limiting the choice of blacks to one of six legislators elected from single-member districts while allowing whites to select two legislators--one from each of their respective election districts and another filled by at-large election in which the black voters of Orange County will have little influence. Pre-Trial Stipulation, Plaintiffs' Contentions, Docket Number 66, at 13.

Defendant moves for summary judgment, and asserts that there is no genuine issue of material fact that the 6-1 system was not adopted and is not being maintained with invidious intent to discriminate against blacks or to dilute the voting strength of black electors; that Orange County has not intentionally denied blacks the right to register to vote or to cast ballots; that with 1990 decennial census data it is possible to draw the boundaries of one black voting age majority district; and that since 1980, white bloc voting has not usually denied the opportunity to blacks to elect candidates of their choice. Defendant's Motion for Summary Judgment, at 2-3.

Plaintiffs respond with Plaintiffs' Motion Made Pursuant to Rule 56(e) and (f), F.R.Civ.P., Docket Number 87, requesting additional discovery prior to adjudication of defendant's summary judgment motion, and Memorandum of Law in Support of Class Plaintiffs' Motion Made Pursuant to Rule 56(e) and (f), F.R.Civ.P., And In Opposition To Defendants' Motion For Summary Judgment, Docket Number 88, addressing the substance of defendant's motion for summary judgment and requesting that the Court deny summary judgment.

PLAINTIFFS' RULE 56(f) MOTION

Plaintiffs' motion under Rule 56(f) requests the Court to defer consideration of defendant's motion for summary judgment and permit plaintiffs to take the depositions of Orange County attorney Tom Wilkes and defendant's expert Michael A. Magiotto and to file with the court "public documents and news reports to demonstrate past and present intentional racial discrimination."

Rule 56(f) states (")Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

The party opposing the motion for summary judgment by Rule 56(f) must state specific facts explaining its failure to respond to the motion for summary judgment with affidavits showing a genuine issue of material fact for trial. Barfield v. Brierton, 883 F.2d 923, 931 (11th Cir. 1989). That party may not simply rely on vague assertions that additional discovery will produce needed but unspecified facts, but must indicate how the stay will permit it, through discovery, to rebut the movant's contentions. Id. The grant or denial of continuance is within the sound discretion of the trial court. Id.

Plaintiffs' motion is supported only by the affidavit of the attorney for the class, Gabe Kaimowitz. In the affidavit, Mr. Kaimowitz states while preparing for depositions that were taken in late October, 1991 he learned of Mr. Wilkes' role in "preparing the way" for the 6-1 system, including

the fact that he served as chairperson of the Citizens' Charter Government Study Committee ("CCGSC"). However, Mr. Wilkes is identified as Chairman of the CRC in a copy of the Orange County Charter filed with this Court on August 30, 1990, as an exhibit to the Affidavit of Judge Claude R. Edwards Circuit Judge, retired (Fla.), Docket Number 43. Yet Mr. Kaimowitz did not attempt to contact Mr. Wilkes concerning a deposition until three days before the November 1, 1991 close of discovery. The Court concludes that Mr. Kaimowitz had ample time to depose Mr. Wilkes and failed to avail himself of the opportunity. Moreover, Mr. Kaimowitz does not indicate in his affidavt how the deposition of Mr. Wilkes would allow him to rebut defendants' motion for summary judgment.

The Kaimowitz affidavit also states that Mr. Kaimowitz did not become aware that defendants had retained an expert to perform an ecological regression analysis of voting patterns in Orange County until October 30, 1991, and submits a copy of defendant's supplemental response to interrogatories number 30 and 36 bearing that date. In view of the strategetic timing of the supplemental response, it is not surprising that plaintiffs were unable to depose the expert, Dr. Maggiotto.

Mr. Kaimowitz states that given the opportunity to depose Dr. Maggiotto, he would

inquire into Dr. Maggiotto's training and expertise in the use of statistics, the justification for the statistical methods Dr. Maggiotto employed in his analysis, and the basis and effect of Dr. Maggiotto's statement that in the 1990 county commission election for district 6, Mable Butler, a Democrat black female defeated Edward N. Rodriguez, a Republican white male.

The Court concludes that the inquiries that Mr. Kaimowitz would have posed to Dr. Maggiotto would not lead to evidence indicating the existence of a genuine issue of material fact. Dr. Maggiotto is a professor of political science and chair of the political science department of Bowling Green State University. He holds a Ph.D. in political science, and specializes in the study of American political behavior and the use of statistical techniques, including regression analysis, to analyze the behavior of the electorate. He has testified as a voting rights expert in Federal District Courts twice previously, and once in State Court. Affidavit of Michael A. Maggiotto, 1-3. The Court finds that there is no genuine issue of Dr. Maggiotto's competence to apply the statistical methods required in this case, and no likelihood that a deposition would raise such an issue.

The statistical methods employed by Dr. Maggiotto, bivariate ecological regression analysis and homogenous precinct analysis, were relied upon by the Supreme Court in Thornburg v. Gingles,

478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), and have been used thereafter in many voting rights cases. E. g. Carrollton Branch of NAACP v. Stallings, 829 F.2d 1547, 1558 (11th Cir. 1987). The Court concludes there is no likelihood that plaintiffs could raise a genuine issue of the reliability or legal sufficiency of these methods by deposing Dr. Maggiotto.

Mr. Kaimowitz also asserts that he would explore the "error" that Dr. Maggiotto made in referring to Edward N. Rodriguez, the 1990 Republican candidate for county commission district 6 as white, when he is Hispanic. Defendant in response submits the affidavit of Mr. Rodriguez, who states therein that he is white and of Hispanic origin. Defendant's Response In Opposition to Class Plaintiffs' Motion Made Pursuant To Rule 56(e) and (f), F.R.Civ.P., Docket Number 93, Exhibit A. The Court takes judicial notice that is possible to be both white and of Hispanic origin, and concludes that plaintiffs would not be able to raise a genuine issue of fact material to this case by deposing Dr. Maggiotto concerning the race of Mr. Rodriguez.

More important, however, the plaintiff class has utterly failed to give reasons why it cannot come forward with affidavits indicating the existence of a genuine issue of material fact concerning the occurrence of white bloc voting. The statistical methods used by the defense expert are endorsed by case law available to and cited by

plaintiffs, and the Orange County voting data it is applied to is a matter of public record. If plaintiffs dispute the use of these methods or data, they have had the opportunity to make the basis for this contention known to the Court and have not done so. Plaintiffs have employed experts of their own in this case[1]. The Court will not speculate about why plaintiffs did not submit the affidavits of those or other experts on these issues. Plaintiffs' lack of access to defendant's expert does not excuse their own failure to submit any affidavits on this essential element of their case in response to defendant's motion for summary judgment.

Plaintiffs' Rule 56(f) motion states that they wish the Court to receive public documents and news reports before summary judgment is considered. Plaintiffs' Motion Made Pursuant to Rule 56(e) and (f), at 2. The motion does not specify any documents beyond those appended thereto.

1--Plaintiffs submitted the affidavit of Professor Mark Stern, a professor of political science, in support of their application for preliminary injunction. See Docket #38. This affidavit asserted that blacks in Orange County tend to vote for black candidates, and that six single-member county commissioner districts would not be a sufficient number to create a black majority district. This contention is now moot. The affidavit does not address the question of white bloc voting.

In view of the public nature of the documents, it is obvious that additional discovery would serve no purpose with respect to them. To the extent that the documents that plaintiffs refer to are admissible under Rule 56, there is no reason that they could not have been submitted with their opposition to defendant's motion for summary judgment. The Court therefore will not defer consideration of the motion for summary judgment on that basis.

This case was filed on July 23, 1990. The first interrogatories were served by defendants in September, 1990. Discovery closed on November 1, 1991. Defendant's motion for summary judgment was filed on November 15, 1991. The parties were advised by order of the Court on December 5, 1991 (Docket Number 85) that they would have until December 20 to file affidavits and other documents within the purview of Rule 56 and that failure to oppose the motion may result in judgment for movants without further proceedings.

Plaintiffs have given no reason why, in more than one year of discovery and one month from the filing of the motion for summary judgment, they could not procure affidavits going to the elements of their case. No reason appears why plaintiffs were less able than the defendant to locate individuals who were involved in the political processes leading to the adoption of the 6-1

system and secure their affidavits, or to secure an expert analysis of the public voting records. As a result, the Court concludes that no additional period of discovery is warranted before considering the motion for summary judgment.

Plaintiffs' motion made pursuant to Rule 56(f) is denied. Plaintiffs' Motion Pursuant to Rule 56(e) and (f) F.R.Civ.P., and Memorandum of Law in Support of Class Plaintiffs' Motion Made Pursuant to Rule 56(e) and (f), F.R.Civ.P., And In Opposition To Defendants' Motion For Summary Judgment, and the accompanying affidavit address the merits of defendant's motion for summary judgment and request that the Court deny summary judgment. The Court now proceeds to adjudicate that motion.

SUMMARY JUDGMENT

Summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c). In determining if a factual issue exists, a court must consider all of the evidence in the light most favorable to the non-moving party. Rollins v. TechSouth, Inc., 833 F.2d 1525, 1528 (11th Cir. 1987). The Rule mandates the entry of summary judgment upon motion, after adequate

time for discovery, against a party who fails to making a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265, 273 (1986). Rule 56(e) requires the nonmoving party to go beyond the pleadings and by its own affidavits or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." Id.

CONSTITUTIONAL CLAIMS

In order to prove at trial that the 6-1 system dilutes the votes of blacks in violation of the Fourteenth Amendment, plaintiffs must show that it was "'conceived or operated as [a] purposeful device to further racial discrimination' by minimizing, canceling out or diluting the voting strength of racial elements in the population." Rogers v. Lodge, 459 U.S. 899, 1083 S.Ct. 198, 74 L.Ed.2d 160 (19820, quoting Whitecomb v. Chavis, 403 U.S. 124, 142, 91 S.Ct. 1958, 1877, 29 L.Ed.2d 363 (1971)(emphasis added). To prevail on the claim under the Fifteenth Amendment, plaintiffs must show a purposeful denial of the right to register or cast ballots. Mobile v. Bolden, 446 U.S. 55, 100 S.Ct. 1490, 1498-99, 64 L.Ed.2d 47 (1980). Nowhere do plaintiffs allege that they have been denied the right to register or cast ballots.

Defendants have convincingly demonstrated that the 6-1 system was not created and is not operated for a discriminatory purpose. Plaintiffs have failed to respond with any fact indicating the existence of a genuine issue with respect to intentional discrimination.

Plaintiffs' complaint refers to a "smoking gun" indicating tht the 6-1 system was intentionally created to dilute the voting power of minorities in Orange County. Plaintiffs' Verified Complaint For Declaratory And Injunctive Relief For A Proposed Class In A Civil Voting Rights Action, Docket Number 1, at 12. The "smoking gun" is a letter to the Orlando Sentinel written by the chairman of the Orange County Democratic Executive Committee ("OCEC") in 1988. In the letter, Mr. Pugh notes that the OCEC supported the creation of seven single-member districts for county commissioners. He points out that the 1986 charter provision calling for a referendum on single member districts did not mention the idea of a "strong mayor,' and states that at public hearings, "no cry for a strong mayor was heard." He then states, "(b) a slim majority within the Charter Commission, the long awaited single member districts are being bonded to the questionable proposal for a County Executive. And that slim majority will not let the rest of us vote on the issues we want to vote on. Nobody will be

allowed, (if the current proposal stands), to vote for the districts without voting simultaneously for the mayor. This is unfair to the voters. It is especially unfair to those minority communities never represented on the county commission." Defendant's Motion for Summary Judgment, Appendix F, Affidavit of Irby Pugh, Exhibit 2.

It is evident that the proposal referred to in the letter did not stand. As submitted to the electorate, the charter referenda did separate the 6-1 system from a pure single-member district system. Furthermore, a fair reading of the letter reveals that Mr. Pugh criticizes the unfairness of the proposal, but does not impute any discriminatory motive to the CRC or anyone else. Indeed, in an affidavit submitted by defendant, Mr. Pugh states that "My letter to the Orlando Sentinel was not meant to suggest or imply that those individuals who advocated the 6-1 system had any intent, motivation or purpose to dilute the voting strength of blacks in Orange County." Pugh Affidavit at 3.

The CRC consisted of fifteen members appointed by individual county commissioners. Carter Affidavit, at 4. Two of the members of the CRC, Wilbur Gary and Ronald Rogers, are black. Defendant's Motion for Summary Judgment, Appendices C and D, Affidavits of Wilbur Gary and Ronald O. Rogers.

Mr. Gary stated the following: The CRC began its deliberations in September, 1987. Its initial meetings focused upon organization, staffing and identification of issues. From the outset, it was his intention to work for a system of county government that would assure that at least one black commissioner would be elected to the Board of County Commissioners. He was in favor of an all single-member district system, without firmly advocating any particular size. Between January and May 1988, he recalls expressing an interest in seven and nine member single-member district systems, including some which included one at-large member. He recalls members of the county commission in early 1988 testifying before the CRC that an all single member district system would not work because it would place too much pressure on district commissioners and would result in ward politics. Representatives from local governments advocated a strong chairperson, and expressed the need to have an effective leader in charge of county government. Elected black officials and administrators from other Florida counties also appeared and testified about the need to have single member districts to provide for minority representation on the county commission.

Mr. Gary states that in his opinion, the issues surrounding the single-member districts, the size of the county commission and the strong

chairperson position were the most important issues before the CRC. These issues dominated the debate and discussion of the CRC from early 1988 until the final vote in July, 1988. Initially, the county chairperson position was put forward as one with extraordinary powers, including a veto over legislation passed by the BOCC. However, through a series of votes by the CRC, the powers of the position were progressively diluted, although the strong chairperson still retained the power to oversee the administration of county government. Mr. Gary was opposed to the chairperson concept as originally proposed because he believed that it had too much power. As the powers were progressively diluted and modified, the concept became more acceptable to him.

In the end, Mr. Gary voted for the 6-1 system because he believed it was the best compromise between those who wished to enhance the opportunity for minority representation on the BOCC and those who wanted the greater leadership and accountability of the strong chairperson. As he recalls, there was no member of the CRC who did not favor some type of single member district system, as each appeared to acknowledge its desirability as a means to provide for minority representation on the BOCC. During the ten months of deliberations, Mr. Gary reports that he never heard any CRC member make any disparaging or

discriminatory remarks, or heard any member state or imply that he supported election of a chairperson from the at-large seat because of a desire to dilute the influence of a black county commissioner, to disenfranchise blacks, or otherwise dilute the voting power of blacks in Orange County. Nor does Mr. Gary recall any suggestion from members of the public that the chairperson should be elected county-wide to prevent a black from being chairperson. Affidavit of Wilbur Gary.

Mr. Gary concludes by saying "(a)fter reflecting about the deliberations of the CRC, I have no reason to believe or even suspect that the CRC voted in favor of the 6-1 system in order to discriminate or dilute the vote of black electors in Orange County. To the contrary, in my opinion, the CRC voted for six single-member districts in order to concentrate or intensify the voting strength of blacks which would make it easier to elect a black to the county commission. In fact, as I recall, the word in the black community was that the 6-1 system would finally allow the election of a black candidate to the county commission." Gary Affidavit, at 4.

Mr. Rogers affidavit corroborates that of Mr. Gary. He states that the representatives of Orange County municipalities recommended a strong chairperson, and that elected officials, members

of the black community, and black officials from other jurisdicitons testified in favor of a single member district system. He indicates that the majority of the CFC did not favor increasing the number of commissioners to nine, and there was substantial concern about ward politics under such a system. Similarly, Mr. Rogers perceived a significant number of citizens who wanted the accountability and leadership of a county chairperson. About half of the public that appeared during hearings supported the chair person or "mayor" system, particularly business leaders and elected officials. Mr. Rogers viewed the 6-1 system as a good compromise between the viewpoints of the black community and those favoring a strong chair. Consequently he voted for the 6-1 proposal. Mr. Rogers states "(a)t no point do I recall any CRC member expressing any interest or intent to dilute the voting power of blacks or otherwise discriminate against blacks. In fact, the opposite was true. The desire of the CRC appeared to be to increase black voting strength by providing for six single-member districts. I believed that such a system represented a substantial improvement over the former five at-large district commission." Affidavit of Ronald O. Rogers.

It is clear from these affidavits that the 6-1 system developed through an open and democratic process free from bias or prejudice and any intent to discriminate against the plaintiff class.

In the deposition of representative plaintiff Cornell Williams, Mr. Williams stated that he had attended three meetings of the CRC. Defendant's Motion for Summary Judgment, Volume I, Appendix K, Deposition of Cornell Williams, at 32. When asked if he saw or heard anything taking place during the hearings he attended that suggested that the CFC would act with the purpose of discriminating against blacks or diluting black voting strength, he replied, "I did not hear or see anything that indicated that, but my experience with at-large election indicated that at-large itself would dilute black vote." Williams Deposition, at 42. He further stated that no one else had ever told him of any occurrence at CRC meeting that would lead him to believe that the CRC intended to discriminate. Williams Affidavit, at 43. His deposition makes clear that his belief is based solely upon the recommendation of the CRC to place the 6-1 system on the ballot.

Representative plaintiff James Mitchell also indicated that he had never heard any of the CRC members say anything that would lead him to believe that the CRC acted with racially discriminatory intent. Defendant's Motion for Summary Judgment, Volume I, Appendix L, Deposition of James Mitchell, at 32. Like Mr. Williams, it is clear from his deposition that his

belief is based solely upon the fact that the system was recommended for the ballot by the CRC. Mitchell Affidavit, 33 et seq.

Similarly, representative plaintiff James Jackson stated that he had attended at least one CRC meeting and had neither seen nor heard of any activities of the CRC that suggested a discriminatory motive, other than the adoption of the 6-1 proposition. Defendant's Motion for Summary Judgment, Volume I, Appendix M, Deposition of James Jackson, at 28-29.

Mr. Wardell Simms, (sic) also a representative plaintiff, stated in deposition that the form of the ballot propositions, and a newspaper report in the Orlando Sentinel at the time of the election that "one cannot win unless you vote for both of them," supported the charge of intentional discrimination. Defendant's Motion for summary Judgment, Volume I, Appendix N, Deposition of Wardell Simms, at 16-17. He stated that he had attended 'several" of the CRC meetings, Id., at 19, and indicated that he did not hear any of the members of the CRC say anything that suggested that the 6-1 system was being proposed with the intent to discriminate against blacks. Id., at 26. He observed, however, that the CRC allotted time more generously to those speaking in favor of the 6-1 system than those who opposed it. Id., at 27.

The Court concludes from the depositions of the representative plaintiffs that they possess no evidence sufficient to raise a genuine question of discriminatory intent in the adoption or maintenance of the 6-1 system. All four representative plaintiffs attended CRC meetings, and only one of the four noticed any activity which he perceived as indicative of a discriminatory intent. Further, that activity (granting more time to speakers who favor the 6-1 system) indicates a preference for the 6-1 system, and does not of itself indicate any racial motive.

While Mr. Simms did not indicate the date of the Sentinel article that he referred to in his deposition, plaintiffs have submitted an Orlando Sentinel article published the week before the 6-1 referendum in support of another motion in this case. The articles states "(i)f voters say no to both options, the commission would stay as it is, with all members elected countywide.

"But when it came time to explain the choices to voters, commissioners decided they would publish a pamphlet explaining the options instead of letting the charter review committee do it. That is when the latest trouble started. The pamphlet, sent out last week, said that voters had to say yes to both options if they wanted a county mayor. That was wrong: Voters can say no to the first question and yes to the second and still ap-

prove the county mayor idea." Memo of Law in Support of Plaintiffs' Motion to Disqualify Thomas J. Wilkes, Esq., as an Attorney of Record in These Proceedings, Exhibit C. Even assuming arguendo that another article had erroneously stated that a vote for both propositions was required to approve the 6-1 system, this article was obviously written in part to clear up the confusion. Moreover, the confusion favored the adoption of the five single-member districts, not the 6-1 system. The Court thus determines that plaintiffs have made no showing that they possess any evidence to indicate that the Orlando Sentinel misinformed the Orange County electorate in order to discrminate against black voters.

Because the 6-1 proposal orginated with the CRC and passed directly to the ballot without the approval of the BOCC, evidence unrelated to to this process is irrelevant to the claim of intentional discrimination. Defendant has shown that there is no genuine issue of intentional discrimination in the creation and operation of the 6-1 system, and plaintiffs have failed to rebut that showing.

VOTING RIGHTS ACT

Section 2 of the Voting Rights Act as amended, states "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in

"a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

"(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered. Provided, That nothing in this section established a right to have members of the protected class elected in numbers equal to their proportion in the population."

In Thornburg v. Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), the Supreme Court provided an extended analysis of the statute. After a discussion of the nature of the proof required to establish a § 2 violation as elaborated in the legislative history, the Court stated that the

circumstances under which such a violation may be proved are limited in three ways. "First, electoral devices such as at-large elections may not be considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it." Gingles, 478 U.S. at 46, 106 S.Ct. at 2764 (citations omitted).

More specifically, the use of multimember districts generally does not violate § 2 absent the conjunction of three preconditions: "First the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district... Second, the minority group must be able to show that it is politically cohesive....Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, such as the minority candidate running unopposed... usually to defeat the minority's preferred candidate." Gingles, 478 U.S. at 505-1, 106 S.Ct. at 2766-67 (citations omitted).

The election districts at issue in Gingles differed from the 6-1 system at bar in that all of the representatives from the contested districts were elected at large. Nevertheless, the Gingles preconditions apply to the plaintiffs' § 2 claim of voting power dilution based upon the downgrading of the powers of the single-member district commissioners and the inability of blacks to elect the at-large chairperson. See Houston Lawyers' Assn. v. Attorney General of Texas, 501 U.S.---, 111 S.Ct. 2376, 115 L.Ed.2d 379 (1991); see also Dillard v. Crenshaw County, 649 F. Supp. 289, 293, (M.D. Ala. 1986), affd, 831 F.2d. 246, 251-3 (11th Cir. 1987).

At the outset of this action, plaintiffs asserted that no black voting age majority district could be drawn under the 6-1 system and sought an order requiring seven single-member districts. Subsequently, the results of the 1990 decennial census have become available. Notwithstanding their failure to stipulate to the fact, the parties have conceded that district six can now be drawn to create a district with a black voting age majority. Pre-Trial Stipulation, plaintiffs' contentions, at 6 ("Blacks do form a majority in one election district under any of the Commission redistricting plans being seriously considered"); Memorandum in Support of Defendant's Motion for Summary Judgment, at 6. Plaintiffs' claim that the 6-1 system does not allow such a district is thus moot.

Defendants assert that there is no genuine issue concerning the fact that the white majority in Orange County does not vote sufficiently as a bloc to enable it usually to defeat the black preferred candidate. In support of its motion, Orange County submits the affidavit of Dr. Michael Maggiotto, an expert in statistical analysis of voting data, whose qualifications are discussed supra. Dr. Maggiotto examined the Orange County voting and registration records for all of the contested County Commission races from 1980 to 1990, Defendant's Motion for Summary Judgment, Volume II; all of the contested county offices involving black candidates opposing Anglo-white candidates from 1980-1990; and the 1988 Charter referenda issues. Affidavit of Michael A. Maggiotto, Defendant's Motion for Summary Judgment, Appendix H, at 3.

Dr. Maggiotto analyzed this data using two independent statistical methods, homogenous precinct analysis and ecological regression analysis. These methods were utilized in the Gingles case, and are accepted by this Court. Dr. Maggiotto's analyses yielded measures of the percentage of black support and white support for the candidates or issues in these elections summarized in the appendices to this opinion.

From his analyses, Dr. Maggiotto found the following: "Between 1980 and 1990, there was a candidate favored by a majority of black electors in 10 out of 13 county-wide Democratic primary and run-off elections for the office of County Commissioner. In 8 of these 10 elections, the candidate preferred by at least a majority of black electors won. In three of the thirteen elections, no candidate received a majority of black votes.

In county-wide general elections for county commission during the same period, candidates favored by at least a majority of black electors won 6 out of 14 contests. In addition, in the 1980 election for district 3, the black majority preferred candidate lost by 0.27% of the total vote. In 1988, the black majority preferred candidate lost by 0.13% of the total vote. In 1990, the winner of the county-commission chair elected at large was Linda Chapin, who was preferred by at least a majority of black electors. The results indicate that Ms. Chapin would not have won without the votes of black electors.

In each of the county-wide general election contests between 1980 and 1990, at least 90 percent of the black electors voted for the Democratic party candidate. In 1990, in the county commission district six election, Democrat Mable Butler, a black female, defeated a Republican

white male.[2] This was a district, rather than county- wide election.

From the foregoing, Maggiotto Affidavit, at 4-5, Dr. Maggiotto opined, Id., at 6, "These results show that it is not the case in Orange County, Florida that County Commission candidates favored by at least a majority of black electors are usually defeated by white bloc voting strength. Quite the contrary, these results show that within the Democratic party, the candidates favored by at least a majority of black electors win most elections. Second, these results show that in general elections, black electors vote overwhelmingly for the Democratic party candidate, and that whenever the Democratic party candidate of choice wins. the black candidate of choice wins. Third, these results indicate that the Democratic party candidates for County Commission won 6 out of 14 county-wide general elections, or 43 percent of the contests, and in two more of these races, the Democratic party candidates came within three-tenths of one percent of winning. Thus, on average, Democratic party candidates typically supported by large majorities of black electors--have roughly an even chance of winning county-wide general election contests for the County Commission in Orange County, Florida."

2. The Republican white male who defeated Mable Butler in district six is Edward Rodriguez, a white male of Hispanic origin.

Dr. Maggiotto noted that with the exception of Ms. Butler's 1990 election to the BOCC, no black candidates ran for county commission between 1980 and 1990. Maggiotto Affidavit, at 6. While acknowledging that significant differences between elections for different offices generally limit the probative value of data from elections for offices other than those at issue, Dr. Maggiotto presented the results of his analyses of county-wide elections in Orange County for school board and county judge in which a black candidate faced a white candidate as follows:

Between 1980 and 1990, there were 7 county-wide elections in which a black candidate ran against one or more white candidates where a nomination was at stake. Six were county-wide primary or run-off elections for school board, and one was a county-wide non-partisan election for judge. In each election, the black candidate received at least a majority of the black electors' votes. The black candidate won six of these seven elections, including the 1980 Republican primary for School Board District 5, in which Kattie Adams, a black female, defeated a white male.

In the same period, there were 8 countywide elections in which a black candidate ran against one or more white candidates where the outcome determined who would occupy the office. Five of

these elections were contests for the school board and three were for judge. In each of these races the black candidate received at least a majority of the black electors' votes. The black candidates won four of these eight elections.

Each general election defeat of a black school board candidate involved a victory for a Republican party candidate. Ms. Adams won the 1980 primary and general school board elections because she receives majorities of the black and white votes. In 1988, Ms. Adams ran against James Mitchell, a black male who had run unsuccessfully for the school board in 1980 and 1984. A majority of white electors favored the Republican candidate Adams, and a large majority of the black electors favored the Democratic candidate Mitchell, although there was more cross-over voting than is typical.

Dr. Maggiotto concluded that in general elections in which a black candidate successfully ran against a white candidate, approximately fifty percent of the white electors voted for the black candidate. Black candidates won ten out of fifteen of the local county-wide elections in which they participated in Orange County since 1980, and the candidates preferred by at least a majority of blacks were not typically defeated by white bloc voting.

Dr. Maggiotto also reviewed election data from the 1988 Charter referenda. He concluded that a majority of black electors favored adoption of both referenda, and both referenda passed. Further the black electors favored passage of both measures by larger majorities than white electors, and the fall-off in support of black electors for the second issue was proportionally the same as the fall-off in support of white electors for the second ballot issue.

Plaintiffs characterize this expert's affidavit as "quite deceiving and in material respects contrary to law and facts." Plaintiffs' Memorandum of Law, Docket Number 88 at 14. Plaintiffs argue that Dr. Maggiotto's conclusions are erroneous because he referred to Mr. Rodriguez, one of the opponents of Mabel Butler as a "Republican white male" without noting Mr. Rodriguez' Hispanic origin. Plaintiffs cite Meek v. Metropolitan Dade County, 908 F.2d 1540 (11th Cir. 1990), for the proposition that "the Latino population is not said to be statistically insignificant."

In Meek, blacks and Hispanics brought suit alleging a violation of the Voting Rights Act. In contrast in this case, no indication of polarized voting with respect to Hispanic origin is before the Court. Moreover, in 1990, 46.8% of the registered voters of district six were black. Defendant's Motion for Summary Judgment,

Appendix G. Ms. Butler received 11,630 votes, more than twice the 5,430 votes cast for Mr. Rodriguez. Viewed in the light most favorable to plaintiffs, the Court is unable to conclude that Ms. Butler won the 1990 district six county commission election due to the "special circumstance" of Mr. Rodriguez's ethnicity.

In addition, defendant has submitted a supplemental affidavit from Dr. Maggiotto, in which he states, "Mr. Rodriguez's race and ethnicity is immaterial to the opinions and conclusions I reached in my affidavit with regards to the opportunity black electors have had in Orange County to elect candidates of their choice to at-large positions. This is because my opinions were based on the success rate black electors have had since 1980 in electing county commission candidates of their choice to the county commission as well as the success rate in electing black candidates for other county offices who ran county-wide." Defendant's Response In Opposition To Class Plaintiffs' Motion Made Pursuant to Rule 56(e) and (f), F.R.C.P., Exhibit C, Supplemental Affidavit of Michael Maggiotto, at 2.

Plaintiffs argue that the evidence of county commission elections in which no black candidate ran should not be considered. In Gingles, 478 U.S. at 67-68, 106 S.Ct. at 2774-75, Justice Brennan,

writing for a plurality of the Court, states, "First, both the language of § 2 and a functional understanding of the phenomenon of vote dilution mandate the conclusion that the race of the candidate is irrelevant to racial bloc voting analysis....[T]he fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry. Under § 2, it is the status of the candidate as the chosen representative of a particular racial group, and not the race of the candidate that is important."

This plurality approach was adopted by the 11th Circuit in Carrollton Branch of NAACP v. Stallings, 829 F.2d 1547, 1556 (11th Cir. 1987) ("as a plurality of the Supreme Court have held, it is the race of the voter, not of the candidate, which is of concern in racial polarization claims.")

Notwithstanding this language in Gingles, the 5th Circuit in Citizens for a Better Gretna v. Gretna, 834 F.2d 496 (5th Cir. 1987), found that only elections in which black candidates had run could be considered in assessing the degree of racially polarized voting. "[I]mplicit in the Gingles holding is the notion that black preference is determined from elections which offer the choices of a black candidate. The various Gingles concurring and dissenting opinions do not consider

evidence of elections in which only whites were candidates. Hence, neither do we." Gretna, 834 F.2d at 503-4.

The Gretna approach was folowed in Bradford County NAACP v. City of Starke, 712 F. Supp. 1523, 1540 (M.D. Fla. 1989). While acknowledging that there is no binding precedent on this issue, Id. the Bradford County found support in the following passage from Solomon v. Liberty County, Fla., 865 F.2d 1566, 1573 (11th Cir. 1988): "Between these extremes, however, there will fall situations in which evidence of vote polarization and minority electoral failure is either inconclusive, insufficient, or unavailable due to a lack of minority candidacies. In these cases, the courts must rely on the full range of (')totality of circumstances(') inquiries to determine whether the challenged electoral system violates the Act."

The Solomon Court stated that this was recognized in Gingles when the Supreme Court noted, "The number of elections that must be studied in order to determine whether voting is polarized will vary according to pertinent circumstances. One important circumstance is the number of elections in which the minority group has sponsored candidates. Where a minority group has never been able to sponsor a candidate, courts must rely on other factors that tend to prove unequal access to

the electoral process. Similarly, where a minority group has begun to sponsor candidates just recently, the fact that statistics from only one or a few elections are available does not foreclose a vote dilution claim." Gingles, 478 U.S. at 57, n. 25, 106 S.Ct. at 2769-70 n. 25.

This Court declines to follow Gretna and Bradford. The quoted passages from Solomon and Gingles do not compel the conclusion that elections in which black candidates did not run cannot be considered. On the contrary, evidence of the lack of black participation in elections in which there were no black candidates would be an important factor that would tend to prove unequal access to the electoral process. Conversely black participation in such elections is a circumstance relevant to whether the electoral system violates the Act.

Nevertheless, the Court concludes that if this case were a challenge to the five at-large commissioner system that the 6-1 system replaced, the affidavit of Dr. Maggiotto would be insufficient to meet the movant's burden on motion for summary judgment. However, the 6-1 system was developed with the participation of the black community and was proposed in part in an attempt to facilitate minority participation in county government. (*Eleventh Circuit disavowed ¶.*)

In Dillard v. Crenshaw County, Alabama, 831 F.2d 246, 250 (11th Cir. 1987), the Court considered the relation between a proposed remedy for a county election system in violation of the Voting Rights Act and the election scheme it was to replace: "The evidence showing a violation in an existing election system may not be completely coextensive with a proposed alternative. The nine factors suggested by Congress rely to a significant degree on a review of the history as tainted by the infirm election procedure. Additionally, a number of these factors are circumstances, not direct evidence of a lack of openness in the political process. Thus at-large procedures that are discriminatory in the context of one election scheme are not necessarily discriminatory under another scheme. The Supreme Court has repeatedly said that at-large procedures are not unconstitutional per se. Id. (citations omitted.)"

The decision of whether to govern Orange County by an all single-member district system or by the 6-1 system with its at-large chairperson was submitted to the voters. A majority of black voters, as well as white voters, chose the 6-1 system.

Under these circumstances, the facts that whites have not voted as a bloc so as to usually defeat the candidates preferred by blacks in Orange County commission races prior to the adoption of the 6-1 system, nor in Orange County school board and judicial races in which black candidates have run, indicate that the 6-1 system does not dilute the voting power of blacks in violation of § 2 of the Voting Rights Act. The additional facts that a black candidate has successfully run for county commission under the 6-1 system, and that the current county chairperson could not have been elected without the support of black voters bolster this conclusion.

In the face of affidavits demonstrating these facts, and fully cognizant of what they would be required to prove at trial, plaintiffs have failed to produce any substantial evidence raising a genuine issue for trial.

Defendant's motion for summary judgment is GRANTED.

All other pending motions are DENIED.

APPENDIX I

REGRESSION ESTIMATES OF RACIAL VOTING FOR COUNTY COMMISSION RACES IN ORANGE COUNTY, FLORIDA: 1980-1990

Race/ Total Party/Votes		WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1980 Democratic Primary					
District 1					
Carter	16,083	41.2	.12	30.2	.12
Thomas	14,781	35.0	.42	53.5	.42
Wagner	9,857	23.8	.10	16.2	.10
District 3					
Cook	8,305	23.2	.00	24.7	.00
Courtney	4,829	13.6	.01	15.9	.01
Spears	14,577	40.4	.06	48.5	.06
Turley	7,975	22.9	.21	10.8	.21
District 5					
Brown	3,508	8.8	.25	18.1	.25
Davis	10,709	30.4	.09	22.9	.09
Ingham	3,947	8.7	.27	18.1	.27
McCree	10,169	33.0	.28	10.8	.28
Oropeza	1,742	2.9	.66	14.9	.66
Swanson	5,776	15.1	.00	15.1	.00

Race/ Total Party/Votes		WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1980 Democratic Run-Off					
District 1					
Carter	27,578	67.2	.38	46.8	.38
Thomas	14,916	32.8	.38	53.2	.38
District 3					
Cook	14,415	42.1	.05	35.4	.05
Spears	20,465	57.9	.05	64.6	.05
District 5					
Davis	19,287	50.4	.21	70.4	.21
McCree	16,539	49.6	.21	29.6	.21
1980 General Election					
District 1					
Carter(D)	71,503	55.1	.63	94.5	.63
LaRue (R)	51,931	44.9	.63	5.5	.63
District 3					
Spears(D)	57,837	46.6	.70	95.8	.70
M'rst'n(R)	58,151	53.7	.70	4.2	.70
District 5					
Davis (D)	56,058	44.2	.68	94.2	.68
T'way (R)	62,771	55.8	.68	4.8	.68
1982 Primary Election					
District 2					
Clenney	1,607	5.3	.11	8.9	.11
Hedrick	5,656	17.5	.40	30.7	.40
Keith	6,634	22.3	-.01	22.7	-.01
Orr	2,249	8.7	.04	5.3	.04
Pins	12,441	46.1	.19	32.1	.19

Race/ Total Party/Votes		WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1982 Primary Election					
District 4					
Harrell	13,542	62.1	.69	70.4	.69
Rigante	7,437	31.1	.31	9.2	.31
Pruett	5,373	20.5	-.01	20.4	- .01
1982 Primary Run-Off					
District 2					
Keith	6,549	34.9	-.01	34.7	- .01
Pins	12,245	65.1	-.01	65.3	- .01
1982 General Election					
District 2					
Pins (D)	47,711	43.1	.81	92.5	.81
D'rm'n(R)	52,742	56.9	.81	7.5	.81
District 4					
H'rr'll(D)	61,201	62.1	.69	94.4	.69
Rod'z (R)	33,290	37.9	.69	5.6	.69
1984 Primary Election					
District 1					
Carter	21,780	64.6	-.00	67.2	-.00
Wagner	10,313	35.4	-.00	32.8	-.00
District 3					
Poole	15,636	52.2	.22	66.0	.22
Trivett	12,999	47.8	.22	34.0	.22
1984 General Election					
District 1					
C'rt'r(D)	108,764	64.6	.75	93.3	.75
West(R)	55,201	35.4	.75	6.7	.75

Race/ Total Party/Votes	WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1984 General Election				
District 3				
Poole (D) 63,315	34.5	.87	97.4	.87
M'rst'n(R) 92,345	65.6	.87	2.6	.87
District 6				
Brown (D) 55,367	28.9	.89	91.5	.89
T'way (R)103,251	71.1	.89	8.5	.89
1986 Primary Election				
District 4				
Chapin 23,456	73.6	-.01	73.5	-.01
Warner 8,394	26.4	-.01	26.5	-.01
1986 General Election				
District 2				
Cmpbll(D) 46,440	30.3	.84	93.9	.84
D'rm'n(R) 83,155	69.7	.84	6.1	.84
District 4				
Chapin(D) 67,531	47.4	.86	95.8	.86
Borgon(R) 63,986	52.6	.86	4.2	.86
1988 Primary Election				
District 3				
Herring 17,163	62.9	.03	67.6	.03
Misicka 9,819	37.1	.03	32.4	.03
1988 General Election				
District 1				
Carter(D) 83,503	49.9	.78	93.5	.78
Moore(R) 74,438	50.1	.78	6.5	.78

Race/ Total Party/Votes	WHITES Support	WHITES Adj R^{2*}	BLACKS Support	BLACKS Adj R^2
1988 General Election				
District 3				
H'rr'ng(D) 81,223	47.1	.87	95.1	.87
M'rst'n(R) 81,448	52.9	.87	4.9	.87
District 5				
Hardee(D) 51,435	29.3	.90	96.7	.90
D'ngon(R) 95,202	70.7	.90	3.3	.90
1990 Primary Election				
District 6				
Butler(B) 4,887	45.7	.59	79.3	.58
Hoard (B) 1,341	26.9	.53	12.9	.51
Mills (B) 1,069	27.4	.35	7.8	.35
1990 General Election				
B'tl'r(D) 11,630	44.3	.96	99.2	.96
Rod'z(R) 5,430	55.7	.96	.8	.96

REGRESSION ESTIMATES OF RACIAL VOTING IN COUNTY SCHOOL BOARD AND JUDICIAL RACES CONTESTED BY BLACK AND WHITE CANDIDATES AND IN RELATED CHARTER REFERENDA IN ORANGE COUNTY, FLORIDA 1980-1990

El't'n/ Total		WHITES		BLACKS	
Party/Votes Race		Support	Adj R^{2*}	Support	Adj R^2
1980 Republican Primary					
School Bd. Dist. 5					
Adams(B)	13,955	56.4	.20	83.6	.20
Dav'es(W)	11,262	35.4	.20	16.4	.20
1980 Democratic Primary					
School Bd. Dist. 6					
M't'll (B)	14,083	34.6	.75	85.8	.75
Berry(W)	10,810	39.6	.59	6.3	.59
Wym'n(W)	7,877	25.8	.20	7.9	.20
1980 Democratic Run-Off					
School Bd. Dist. 6					
M't'll(B)	17,650	44.0	.78	90.2	.78
Berry(W)	16,291	56.0	.78	9.8	.78
1980 General Election					
School Bd. Dist. 5					
Adams(B)	68,746	59.2	.01	54.9	.01
K"sky (W)	45,907	40.8	.01	45.1	.01
School Bd. Dist. 6					
M't'll(B)	46,106	33.0*	.84	98.5*	.84
Barn's(W)	70,075	66.1*	.84	1.5*	.84

***These %'s are correct--reversed in publt'n.**

El't'n/ Party/Votes Race		WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1982 Democratic Primary					
School Bd. Dist. 1					
Baker (B)	10,664	29.7	.79	77.6	.79
Hrd'z (H)*	7,321	40.3	.47	13.0	.47
Stone (W)	9,866	30.0	.36	9.4	.36
*Note that Hernandez here is listed racially as an Hispanic. Rodriguez, supra, is listed as white below in a commission race, though he is Hispanic.					
1982 Democratic Run-Off					
School Bd. Dist. 1					
Stone (W)	9,183	60.7	.70	11.4	.70
Baker (B)	9,135	39.3	.70	88.6	.70
1984 General Election					
School Bd. Dist. 4					
White (B)	57,163	31.0	.89	97.9	.89
P'rs'ns(W)	95,395	69.0	.89	2.1	.89
School Bd. Dist. 6					
M't'll (B)	55,000	28.5	.91	99.3	.91
Barn's(W)	98,711	71.5	.91	0.7	.91
School Bd. Dist. 5					
Adams (B)		UNOPPOSED			
1986 Democratic Primary					
School Bd. Dist. 1					
Baker (B)	15,699*	43.1	.65	80.8	.65
Stone (W)	16,062*	56.9	.65	19.2	.65
***Stone won. Pub. vote totals were reversed.**					

El't'n/ Party/Votes Race	Total	WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1986 Nonpartisan Primary					
County Court Judge					
Br'ns'n(B)	32,127	49.2	.49	81.3	.49
Kelley(W)	28,597	50.8	.49	18.7	.49
1986 General Election					
School Bd. Dist. 1					
Baker(B)	52,388	35.3	.85	98.7	.85
G'rd'r(W)	75,935	64.7	.85	1.3	.85
1988 Nonpartisan Primary					
Circuit Judge, Group 3					
Perry (B)	34,472	51.5	.54	74.5	.51
Byrd (W)	28,990	48.5	.54	25.5	.51
1988 Charter Issues					
5 Single Mem. Dist					
Yes	104,293	60.5	.35	72.3	.35
No	63,126	39.5	.35	27.7	.35
6-1 System					
Yes	93,078	55.2	.24	65.5	.24
No	72,753	44.8	.24	34.5	.24
1990 Democratic Primary					
County Comm. Dist. 6					
Butler(B)	4,877	45.7	.59	79.3	.58
Hoard (B)	1,341	26.9	.53	12.9	.51
Mills (B)	1,069	27.4	.35	7.8	.35

El't'n/ Party/Votes Race	Total	WHITES Support	Adj R^{2*}	BLACKS Support	Adj R^2
1990 Nonpartisan Primary					
County Comm. Dist. 6					
Golden(B)	27,287	36.5	.80	79.8	.80
Hart (W)	22,797	36.6	.53	16.8	.51
H'ff'n(W)	16,590	27.0	.35	7.8	.35
1990 General Election					
County Judge					
Golden(B)	63,240	49.2	.76	79.1	.78
Hart (W)	16,590	27.0	.56	20.9	.78
County Comm. Dist. 6					
Butler(B)	11,630	44.3	.96	99.2	.96
Rod'z (W)(sic)	5,430	55.7	.96	0.8	.96

*R^2 is a coefficient of determination. Higher values reflect a better fit of the data to the regression analysis. The upper limit is 1.0.

PETITIONERS' NOTE: Note that there is no total vote in any of the elections according to race, i.e. in no race is it indicated how many blacks voted and how many whites. Note also the aforementioned errors in the ongoing notes. Only the "R^2" note is that of the Court.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO FLORIDA
CASE NO. 90-547-CIV-ORL-19

CORNELL WILLIAMS, ET AL.,
Plaintiffs,

v.

ORANGE COUNTY, FLORIDA, BOARD OF COUNTY COMMISSIONERS, et al.,
Defendants.

_____/

ORDER

Upon due deliberatioon and consideration of Plaintiffs'

MOTION: To Set Aside an Order of a Magistrate Judge Denying Access to Court in This Action Specifically Sought for a Discovery Conference.

FILED: October 15, 1991 (Doc. No. 73).

It is hereby ORDERED that the Motion is DENIED.

DONE AND ORDERED at Orlando, Florida, this 28th day of January, 1992.

/s/ James L. Watson
JAMES L. WATSON
UNITED STATE DISTRICT JUDGE
(Sitting by Designation)

Copies to: Counsel of Record
FILED: 92 JAN 28....

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO FLORIDA
CASE NO. 90-547-CIV-ORL-19

CORNELL WILLIAMS, et al.,
Plaintiffs,
v.
ORANGE COUNTY, FLORIDA, BOARD OF COUNTY COMMISSIONERS, et al.,
Defendants.
_____/

ORDER

This case was considered by the Court upon the following matters:

1. Motion of Defendant Orange County for Summary Judgment, filed November 15, 1991 (Doc. No. 79).

The parties are hereby notified that the Court will take the Motion for Summary Judgment under advisement on December 20, 1991. Until that date, the parties may file affidavits or other documents within the purview of Federal Rule of Civil Procedure 56 in support of or in opposition to the motion. Failure to oppose the Motion for Summary Judgment may result in judgment for movants without further proceedings. See Milburn v. United States, 734 F.2d 762 (11th Cir. 1984); Griffith v. Wainwright, 772 F.2d 822 (11th Cir. 1985).

3. (sic--no 2.) Motion by Defendants for Continuance of Pretrial Conference and Trial (Doc. No. 84, filed December 2, 1991). Upon consideration, Defendants' Motion for Continuance of Pretrial Conference and Trial (Doc. No. 84) is DENIED with leave to reassert the Motion for Continuance of Trial at the Pretrial Conference.

DONE AND ORDERED at Orlando, Florida, this 4th day of December, 1991.

/s/Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to: All counsel of Record.
FILED 5 DEC 91

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

NOTICE OF PRETRIAL CONFERENCE

Senior Judge James L. Watson will be sitting in Orlando as a visiting judge beginning January 2, 1992. He will be trying civil cases assigned to Judge Patricia C. Fawsett's January 1992 trial calendar. On December 9 and 10, 1991, Judge Watson will hold scheduling/pretrial conferences in Courtroom 3 in the United States Courthouse, 80 North Hughey Avenue, Orlando, Florida as set forth below. Please call Sandy Zimmerman in the Clerk's Office in Orlando at (407) 648-6899 if you have any questions concerning these scheduling/pretrial conferences.

Monday, December 9, 1991:

9:30 a.m. 90-707-Civ-Orl-19
CLIFFORD C. WOOD, et al., v. Robert E. Weisberg
GRUMMAN AEROSPACE CORP. Frank...Kruppenbacher
10:15 a.m. 90-589-Civ-orl-19
ARTHUR C. CONKLING v. Julius L. Williams
GRUMMAN AEROSPACE CORP. Frank...Kruppenbacher
11 a.m. 90-698-Civ-Orl-19
ZOLTAN A. ANTHONY, et al. v. John G. Pierce
EASTMONT GROUP, INC., et al. Jerome Tremont....
11:45 a.m. 86-400-Civ-Orl-19
HARTMUT BACHMANN v. Sherri K. DeWitt
ERNST D. KLEIN, et al., Terrence W. Ackert

1:30 p.m. 90-384-Civ-Orl-19	
WESTFIELD COMPANIES v.	Janet L. Brown
ROYAL ORIENTAL RUGS, INC.	Paul M. Thompson....
2:15 p.m. 87-327-Civ-Orl-19	
DEBI WILLIAMS v.	C. Chobee Ebbets
A.G. CONTINENTAL...	John A. Reed, Jr.
3:00 p.m. 90-802-Civ-Orl-19	
LEONARD QUICK v.	James R. Valerino
TAMAR VISTA INC., INC., et al.	Walter D. Rogers....
3:45 p.m. 90-470-Civ-Orl-19	
FREDERICK J. AUGUSTIN v.	Ronald L. Harrop
BORDEN, INC.	Bradford Swing
Tuesday, December 10, 1991:	
9:30 a.m. 90-494-Civ-Orl-19	
WORLDWIDE UNDERWRITERS...	James K. Powers
v. MICHAEL TRACY, et al.	Mark W. Clark....
90-587-Civ-Orl-19	
MICHAEL L. TRACY v.	Joseph J. Reiter
WORLDWIDE UNDERWRITERS...	John W. Smith....
10:45 a.m. 90-547-Civ-Orl-19	
CORNELL WILLIAMS et al. v.	Johnie A. McLeod....
THE ORANGE COUNTY...	Arthur B. Applegate....
11:30 a.m. 90-590-Civ-Orl-19	
CONTINENTAL CASUALTY v.	Geoffrey D. Ringer
KACO CONTRACTING...	William E. Lawton....
1 p.m. 90-769-Civ-Orl-19	
MARY E. TEAGUE v.	Pro se
THE FLORIDA DEPARTMENT....	Linda C. Quillen....

1:45 p.m. 90-878-Civ-Orl-19	
RHONDA FLAGLER, et al., v.	Treena Ann Kaye
THE HOUSING AUTHORITY...	Stanley E. Halbert
2:30 p.m. 91-24-Civ-Orl-19	
PAUL ERIC DYKES v.	Pro Se
GENIUS WORKSHOP, INC., et al.	Pro Se

November 15, 1991

DAVID L. EDWARDS, Clerk
/s/Sandy Zimmerman
Deputy Clerk

To: All counsel of record and pro se litigants

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS, et al.,
Defendants.
_____/

ORDER

This cause came consideration without oral argument on the following Motion(sic) filed herein:

MOTION FOR SEPARATE TRIALS AND FOR PROTECTIVE ORDER

FILED SEPTEMBER 6, 1991 by Defendants (*63)

Thereon it is ORDERED that the Motion for Protective Order is denied. The Motion for Separate Trials is reserved to the District Judge presiding.

MOTION TO COMPEL DISCOVERY AND FOR AWARD OF ATTORNEYS' FEES AND COSTS

FILED SEPTEMBER 6, 1991 by Defendants (*64)

Thereon it is ORDERED that the Motion is denied.

MOTION PLAINTIFFS' MOTION FOR A DISCOVERY CONFERENCE
FILED September 16, 1991 (*65)

Thereon it is ORDERED that the Motion is denied /s/ D.P. Dietrich
D. P. Dietrich
United States Magistrate Judge

Copies furnished to:
(Counsel of record)
COPIES MAILED ON 3 October 1991
by _____/initialed
Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS, et al.,
Defendants.
_____/

ORDER

This cause came consideration without oral argument on the following Motion(sic) filed herein:

MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND FOR AWARD OF COSTS AND ATTORNEYS' FEES

FILED June 21, 1991 by Defendants (#55)

Thereon the Motion is granted. The Interrogatory answers are wholly inadequate. Full and complete written answers to the Interrogatories shall be provided within twenty (20) days. No fees or costs.

MOTION JOINT MOTION TO EXTEND DISCOVERY SCHEDULE AND DEADLINE FOR FILING DISPOSITIVE MOTIONS

FILED June 28, 1991 (#57)

Thereon it is ORDERED that the Motion is granted in part. Discovery shall close November 1, 1991. All motions shall be filed by November 15, 1991, and the pre-trial stipulation shall be filed by December 1, 1991.

DONE AND ORDERED at Orlando, Florida this 2nd day of July, 1991.

/s/ D. P. Dietrich
D. P. Dietrich
United States Magistrate Judge

Copies furnished to:
(Counsel of record)
COPIES MAILED ON 2 July 1991
by _____/initialed
Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS, etc. et al.,
Defendants.
_____/

ORDER CERTIFYING CLASS

This case was considered at hearing attended by counsel for all parties on December 10, 1990 to consider the Motion of Plaintiffs for Class Certification (Doc. No. 46, filed October 19, 1990).

No opposition to Plaintiffs' Motion for Certification being presented, the Court certifies the Plaintiff class defined as all black citizens of Orange County, Florida who are now, who will be, or who have been eligible, to vote since 1980.

DONE AND ORDERED at Orlando, Florida this 7th (sic) day of December, 1990.

/s/ Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
FILED 90 DEC 11....

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS, etc., et al.,
Defendants.
_____/

ORDER

This case was considered by the Court on the Motion of Plaintiffs' for Class Certification (Doc. No. 46, filed October 19, 1990).

The Court will hold a hearing on such Motion on December 10, 1990, at 11:45 a.m. in Courtroom II, Sixth Floor, Federal Building, 80 North Hughey Avenue, Orlando, Florida, this 28th day of November, 1990. /s/Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record,
Lou Pirone, Courtroom Deputy
FILED: 90 NOV 28

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY; FLORIDA BOARD
OF COUNTY COMMISSIONERS, and others.
Defendants.
_____/

ORDER

This case is before the Court after hearing on August 31, 1990, on the Motion of Plaintiffs for Preliminary Injunction (Doc. No. 2, filed July 23, 1990). Plaintiffs have submitted the following materials in support of their Motion: Memorandum in Support of Motion (Doc. No. 4, filed July 23, 1990); Second Memorandum in Support and Response (Doc. No. 37, filed August 27, 1990); Case Cites (received August 27, 1990). Defendants have submitted a Response to Plaintiffs' Motion (Doc. No. 21, filed August 3, 1990) accompanied by supporting Affidavits (Doc. Nos. 23 & 24, filed August 3, 1990).

PRELIMINARY INJUNCTION

Plaintiffs, Cornell Williams, James Jackson, Wardell Sims, James Q. Mitchell, the Orange County Political Coalition, and the Committee of Organized Groups seek a preliminary injunction to stay the impending primary election on September 4, 1990, of County Commissioners in Orange County, Florida. Plaintiffs allege that the six single-member district commissioners and the single County Chairman elected at-large dilutes the voting strength of black citizens in Orange County in violation of the 14th and 15th Amendments to the United States Constitution and the Voting Rights Act, 42 U.S.C.A. § 1973 (1982).

Defendants, the Orange County, Florida, Board of County Commissioners, Commission Chair Hal Marston, Former Commission Chair Tom Dorman, Commissioners Linda Chapin, Vera Carter, and Bill Donegan, and Supervisor of Elections Betty Carter contend that Plaintiffs have failed to meet the prerequisites entitling them to preliminary injunctive relief and further allege that Plaintiffs are barred by the doctrine of laches.

In order for a preliminary injunction to be issued, the Court must find that the moving party has satisfied four prerequisites. First, there must

a substantial likelihood of success on the merits. Second, there must be a showing that the movant will suffer irreparable injury unless the injunction is issued. Third, the movant must show that the injury to the movant outweighs the damage the proposed injunction may cause the opposing party. Fourth, movant must demonstrate that if issued the injunction will not be adverse to the public interest. Compact Van Equipment Co. v. Leggett & Platt, Inc., 566 F.2d 952, 954 (5th Cir. 1978).

SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS

The Plaintiffs have failed to demonstrate a substantial likelihood of ultimately prevailing on the merits. The Plaintiffs must meet a three part test as a threshold to maintaining a claim under section 2 of the Voting Rights Act. Solomon v. Liberty County, Florida, 4 FLW FED C482, 485 (11th Cir. May 11, 1990); see also Thornburg v. Gingles, 478 U.S. 30 (1986). Plaintiffs' probability for success on the merits should be evaluated in light of these three factors.

First, Plaintiffs must demonstrate the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district. Solomon, 4 FLW Fed at 485. If the minority group is too small or

dispersed under any reasonable plan, then the plaintiffs cannot prevail. Id.

Second, Plaintiffs must be able to show that the minority group is politically cohesive. "An at-large system cannot be responsible for submerging a minority group's political interests if that group does not have common interests evidenced by a pattern of block voting." Gingles at 51.

Third, Plaintiffs must be able to show that the white majority votes sufficiently as a block to enable it to usually defeat the minority's preferred candidate. Solomon at 485; Gingles at 56.

Plaintiffs have failed to demonstrate that a politically and geographically cohesive minority district could reasonably be created. Plaintiffs' own expert by affidavit has stated that it would take more than seven districts for a compact and contiguous black majority district to be created (Doc. No. 38, E. 11, filed August 27, 1990). No information was given regarding the number of districts which would be necessary to provide a single compact and contiguous black majority district. Therefore, the Court has no basis for making a determination as to Plaintiffs' contentions concerning the existence of a

reasonable plan.[1]

Additionally, Plaintiffs have failed to provide sufficient evidence to meet the second and third of the threshold requirements. Plaintiffs have provided no clear evidence of an established pattern of block voting among the minority group. Finally, there is no convincing evidence that the white voters consistently vote as a block to defeat minority candidates.

PUBLIC INTEREST

In addition, Plaintiffs have failed to persuade the Court that issuance of the injunction would not be adverse to the public interest. In support of their motion Plaintiffs rely on Dillard v.

1--Plaintiffs' expert witness, Professor Mark Stern, notes "[a] seven district commissioner plan could produce a minority (black and hispanic) district in which the voting preference of blacks and hispanics could produce a majority vote." (Doc. No. 38, E.10, filed August 27, 1990). Professor Stern states that the black vote is predominantly democratic. No information has been presented on the voting patterns of hispanics. There was no information on whether blacks and hispanics would vote as a politically cohesive block.

Crenshaw County, Ala., 640 F. Supp. 1347, 1362 (M.D. Ala. 1986). Even though the four prerequisites for a preliminary injunction were met, the Court in Dillard refused to order a stay of the impending primary elections which were less than three months away because it would be unfair and unreasonable to require implementation of a new apportionment scheme in the time remaining. Id. at 1362. The Dillard Court found that an injunction of the impending elections "would effectively deny the entire electorate the right to vote and thus seem to offend the basic principles of representative government." Id. at 1363.

This new system of government was approved by the Orange County voters on November 8th, 1988. (Doc. No. 1, Complaint of Plaintiffs at ¶ 3, filed July 23, 1990; Doc. No. 23, Affidavit of Betty Carter, Supervisor of Elections for Orange County, filed August 3, 1990). The elections which the Plaintiffs seek to enjoin are set for September 4, 1990, four days from the date of the hearing and forty-three days from the filing of the Complaint. Where an election is imminent and the election process engaged, a Court may be justified in withholding injunctive relief in an apportionment case. Reynolds v. Sims, 377 U.S. 533, 585 (1964).

> In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexity of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.
> Reynolds at 585.

Staying the impending Orange County elections at this late date in the process would be contrary to the public interest and the benefits to the Plaintiffs from injunctive relief would be outweighed by the harm to the Defendants and the public. As plaintiffs have failed to establish the necessary prerequisities to warrant a preliminary injunction[2], the Motion for Preliminary Injunction is DENIED.

2--Plaintiffs assert that the perpetuation of the dilution of voting strength establishes irreparable harm. It is unnecessary for the Court to address the prerequisite of irreparable injury since the

DONE AND ORDERED at Orlando, Florida, this 31st day of August, 1990.

/s/ Patricia C. Fawsett,
PATRICIA C. FAWSETT,
UNITED STATES DISTRICT JUDGE

Copies to: All Counsel of Record.

2 (cont.)--Plaintiffs have failed to show likelihood of success on the merits and that injunctive relief is in the public interest. The Court notes there is a conflict as to whether irreparable injury is presumed in voting rights cases. Two District Courts within the Eleventh Circuit have held that irreparable harm is presumed in voting rights cases. Dillard at 1363; Harris v. Graddick, 593 F. Supp. 128, 135 (M.D. Ala. 1984). The Eleventh Circuit has not yet ruled on this issue. The Fifth Circuit in Chisom v. Roemer, 853 F.2d 1186, 1189 (5th Cir. 1988), has declined to adopt this presumption of irreparable harm.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,

v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS, and others.
Defendants.

_____/

ORDER

This case is .before the Court on the following matters:

1. The Motion and Memorandum of Plaintiffs for Reassignment of Case (Doc. Nos. 14 and 15, filed July 27, 1990). This Motion is DENIED.

2. The Motion and Memorandum of Plaintiffs for Sanctions (Doc. Nos. 25 and 26, filed Aug. 6, 1990). This Motion is DENIED.

3. The Motion and Memorandum of Plaintiffs for Reconsideration of Order Denying Recusal (Doc. Nos. 27 and 28, filed Aug. 6, 1990). This Motion is DENIED.

4. The Motion and Memorandum of Plaintiffs for Preliminary Injunction (Doc. Nos. 2 and 4, filed

July 23, 1990). Defendants have filed a Response and Memorandum in Opposition to the Motion for Preliminary Injunction (Doc. Nos. 20 and 21, filed Aug. 3). This Motion shall be taken under advisement at the hearing scheduled below.

5. The Motion of Plaintiffs for Hearing on the Motion for Preliminary Injunction (Doc. No. 3, filed July 23, 1990). This motion is GRANTED.

A hearing on Plaintiffs' Motion for Preliminary Injunction is scheduled for Friday, August 31, 1990, at 11:45 a.m. before the undersigned Judge in Courtroom 2, Sixth Floor of the Federal Building, 80 North Hughey Avenue, Orlando, Florida. One hour has been set aside for this hearing. Prior to this date, the parties may file additional materials, including memoranda and affidavits, in support of or in opposition to the Motion for Preliminary Injunction. See Rule 4.06, Local Rules, United States District Court, Middle District of Florida.

DONE AND ORDERED at Orlando, Florida, this 15th day of August, 1990.

/s/Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to: All Counsel of Record.
FILED 90 AUG 15....

UNITED STATES DISTRICT COURT
Middle District of Florida
Office of the Clerk
80 North Hughey Avenue
Orlando, Florida 32801

July 30, 1990

NOTICE OF JUDICIAL REASSIGNMENT

Former Case Number: 90-547-Civ-Orl-18
Redesignated Case Number; 90-547-Civ-Orl-19
Case Style: Cornell Williams, etc., et al., v. The Orange County, Florida, Board of County Commissioners, et al

Pursuant to Court order, the above-styled action has been reassigned to the Honorable Patricia C. Fawsett for all further proceedings. As a result of the reassignment, the District Court case number has also been changed to 90-547-Civ-Orl-19.

It is imperative that all future pleadings and/or papers offered for filing reference this designated case number, otherwise papers may be misfiled or delayed in getting to the assigned judicial officer.

Sincerely,
DAVID L. EDWARDS, CLERK
By: /s/Jan McClung
Deputy Clerk

cc: Counsel of Record
FILED: 90 JUL 30....

JUDICIAL REASSIGNMENT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v. Case No. 90-547-Civ-Orl-19

ORANGE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS,
Defendants.
_____/

ORDER

This case was considered by the Court on Plaintiff's Motion for Recusal (Doc. No. 5, filed July 23, 1990). Upon consideration, the Plaintiff's Motion for Recusal as it pertains to the undersigned Judge (Doc. No. 5) is DENIED.

DONE AND ORDERED at Orlando, Florida, this 27th day of July 1990.

/s/ Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
FILED 90 JUL 27

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
v.
THE ORANGE COUNTY, FL BOARD OF COMMISSIONERS et al.
Defendants.
_____/

Case No /s/90-547-CIV-ORL-18

STAMPED on the face of the Motion
GRANTED and SO ORDERED this
23 day of July 1990
/s/G. Kendall Sharp
G. KENDALL SHARP
United States District Judge

PLAINTIFF'S MOTION FOR RECUSAL

COMES NOW Plaintiff COMMITTEE OF ORGANIZED GROU(PS, ("COG"), on the basis of the affidavit of its correspondence secretary Plaintiff James Jackson and moves for recusal of judges resident in Orlando, Florida.

This motion is made pursuant to 28 U.S.C. §§144 and 455a. The affidavit is timely and should suffice to prevent these judges from

proceeding further. Another judge should be assigned to hear the proceeding.

Both the Hon. G. Kendall Sharp, and the Hon. Patricia Fawsett did recuse themselves when requested to do so by COG in its proceeding against the City of Orlando, 88-962-Civ-Orl-18 (10). Judge Sharp recused himself, because of what he stated was possible bias against the COG counsel who appears in this matter as well. Judge Fawsett did so for the sake of the appearance of justice. Each has recused himself or herself in two other matters in which this counsel has filed civil actions.

All three proceedings continue before a judge other than Judges Sharp or Fawsett. In COG v. City of Orlando, supra, black Plaintiffs claimed they were being resegregated by various public projects being created by the municipality. Judge W. T. Hodges has denied a motion to dismiss claims in that action made pursuant to 42 U.S.C. §§1981, 1982, and 1983.

FILED 90 JULY 24....

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CORNELL WILLIAMS, et al.,
Plaintiffs,
vs. CASE NO. 90-547-CIV-ORL-19

THE ORANGE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS,
et al.,
Defendants.
_____/

PRE-TRIAL STIPULATION

COME NOW the Plaintiffs, Cornell Williams, James Jackson, Wardell Sims, and James Q. Mitchell, and all black citizens of Orange County, Florida who are now, who will be or who have been eligible to vote since 1980, and the Orange County Political Coalition; and Defendants, the Orange County Board of County Commissioners, and the Supervisor of Elections, by and through their undersigned attorneys, and pursuant to Local Rule 3.06, file and serve their joint Pre-Trial Stipulation as follows:....

9. Statement of Issues of Fact Which Remain to Be Litigated:

a. Whether blacks are sufficiently numerous and geographically compact to constitute a majority in a single-member district in Orange County, Florida.

b. Whether legally significant racial bloc voting has occurred in Orange County elections between 1980 and 1990.

c. Whether the 6-1 plan was adopted or is being maintained with the intent of discriminating against black electors or otherwise diluting the voting strength of black electors in Orange County.

d. Whether Orange County has acted with intent to deny blacks the rights guaranteed to them under the Fifteenth Amendment.

e. All mixed law/fact issues listed in 10., infra.....

12. List Of All Motions Or Other Matters Requiring Court Action At This Time.

a. Defendants' Motion for Summary Judgment.

b. Plaintiffs' Motion to Disqualify Tom Wilkes, Orange County Attorney.

c. Defendants' Motion for a Continuance.

d. Defendants' Motion in Limine.

e. Plaintiffs' Motion to Set Aside Magistrate's Denial of Discovery Conference.

Respectfully submitted,

Johnie A. McLeod, Esq.
McLeod, McLeod & McLeod
P.O. Drawer 950
Orlando, Florida 32792(sic)
(Apopka, Florida 32703)

Charles G. Burr, esq.
Zinober & Burr
201 E. Kennedy Blvd.
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Gabe Kaimowitz, esq.
3173 Whisper Lake, *A
Winter Park, Florida 32792

A. Bryant Applegate
Assistant County
Attorney
P.O. Box 1393
Orlando, Florida 32802

Attorneys for Plaintiffs
/s/Gabe Kaimowitz
Fla. Bar No. 0633836

Attorneys for Defendants
/s/ A. Bryant Applegate
Fla. Bar No., 346926

DATED this 3rd day of December 1991.

DOCKET entry--"12/5/91 *86 PRETRIAL STATEMENT (bsl) [Entry date 12/05/91]"

SUPREME COURT OF THE UNITED STATES

No. A-703
Orange County Political Coalition, et al.,

Petitioners,

v.

Orange County, Florida, et al.,

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including April 27, 1993.

/s/ Anthony M. Kennedy
Associate Justice of the Supreme
Court of the United States

Dated: this 18th
day of March, 1993.